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February 4, 1988

ATTORNEY GENERAL OPINION NO. 88- 15

The Honorable Bob Ott
State Representative, Seventy-First District
State Capitol, Room 180-W
Topeka, Kansas 66612

Re: Counties and County Officers -- Mental Health Centers -- Community Mental Health Centers and Community Facilities for the Mentally Retarded; Tax Levy, Use of Proceeds

Synopsis: K.S.A. 19-4001 et seq. allows counties to establish community facilities for the mentally retarded, to levy a tax to support such facilities, and to solicit and accept funding from various other sources. K.S.A. 1987 Supp. 65-4411 et seq. establishes one source for such funding, based on the number of "full-time equivalent clients" in the facility. The definition of a full-time equivalent client is contained in K.S.A. 1987 Supp. 65-4413(b). Unless former state patients fit within the family-crisis exception, they cannot be accepted before those previously on the community facility's waiting list and still be defined as a full-time equivalent client.

K.S.A. 19-4005 forbids denial of services based on an inability to pay. Thus, a facility may accept former state patients who do not fall within the family crisis exception before those currently on the waiting list only if the facility is merely electing one source of funding over another. Should there be a denial of services based on an inability to pay in violation of K.S.A. 19-4005, the county does not automatically lose its ability

to levy taxes. However, aggrieved persons denied services may seek recourse through private civil remedies, or the electors may file a protest petition under K.S.A. 19-4004 seeking to block additional tax levies. Cited herein: K.S.A. 19-4001; 19-4004; 19-4005; 19-4008; K.S.A. 1987 Supp. 65-4411; 65-4413; K.A.R. 1987 Supp. 30-22-32.

Dear Representative Ott:

As Representative for the Seventy-First District you request our opinion on the legal ramifications of encouraging, through state funding, community mental retardation facilities to accept state patients previously living in state facilities. You inform us that in some cases these state patients may, because of the funding involved, be accepted before individuals who were ahead of them on the community facility's waiting list. You specifically inquire whether such a plan would deny services to persons on the community facility's waiting list because of their inability to pay and if that alleged denial would affect the community facility's eligibility for county tax levy funding.

K.S.A. 19-4001 et seq. authorizes the establishment by counties of facilities for the mentally retarded. As a means of financing these facilities counties are authorized to levy a tax, provided the prescribed procedures are followed. Under K.S.A. 19-4003, a duly appointed governing board has charge of the community facility for the mentally retarded in such areas as disbursements, policies, personnel employment, budget, and the general operation of the facility. While limitations on the tax levy exist (see Attorney General Opinion No. 85-102), this act does not link the authority to levy with the operational policies adopted by the governing board.

K.S.A. 19-4008 authorizes the acceptance of moneys from sources other than the authorized tax levy. K.S.A. 19-4004 permits such funds to be used for the operation or construction of facilities for the mentally retarded. Thus, any county community facility for the mentally retarded established pursuant to authority granted under K.S.A. 19-4001 et seq. may be funded through the levy of taxes and through ". . . gifts or grants received from private, county, state and federal sources." One such source of funding is set forth in K.S.A. 1987 Supp. 65-4411 et seq.

K.S.A. 1987 Supp. 65-4411 et seq. establishes the Kansas community mental retardation facilities assistance act.

K.S.A. 1987 Supp. 65-4413(b) and K.A.R. 1987 Supp. 30-22-32 allow the state to make grants to mental retardation facilities. K.S.A. 1987 Supp. 65-4113(b) bases payment of these funds on the number of "full-time equivalent clients" served by the facility.

The definition of full-time equivalent client is contained in K.S.A. 1987 Supp. 65-4113(b) which states in part that such a client is one accepted on or after July 1, 1987 "by the facility on a first-come, first-serve basis in order of the time at which application was made to the facility on behalf of the client. . . ." The only variation in this definition allows designation of full-time status to those accepted "on other than a first-come, first-serve basis because of a family crisis occasioned by family circumstances. . . ." The statute authorizes the secretary of the Department of Social and Rehabilitation Services (S.R.S.) to identify "family crises occasioned by family circumstances" and then directs that the agency specify "types of family crises most likely to necessitate admission to a facility and . . . establish criteria for determining the appropriateness of such admission." The former state patients in question must meet this definition of full-time equivalent client to be eligible for state funding under this act.

If the definitions established by the secretary of S.R.S. allow displaced state patients to be defined and categorized as in a "family crisis", then admission to the facility on other than a first-come, first-serve basis will not adversely affect state funding under K.S.A. 1987 Supp. 65-4411 et seq. If these displaced state patients do not meet the required definition for a full-time equivalent client because they are accepted into the facility on other than a first come first serve basis and no exception applies, then funding for these patients will not be available under this act.

K.S.A. 1987 Supp. 65-4411 et seq. is not the sole source of funding available to community facilities for the mentally retarded. K.S.A. 19-4008 permits such facilities to solicit and accept funds from many sources. Should the governing board of the facility elect to accept funding from other sources, that is within the authority statutorily granted. The impact this might have on other funding sources (See, e.g., K.S.A. 65-4411 et seq.) must be determined in light of individually established funding requirements.

Acceptance of clients to a community facility for the mentally retarded must comply with the policy set forth in K.S.A.

19-4005 which mandates that "no person shall be denied the services of said . . . facility for the retarded because of inability to pay for same." (Emphasis added). If the governing board elects one source of funding (payment through S.R.S. for displaced state patients) over an alternative source of payment (grants under K.S.A. 1987 Supp. 65-4411 et seq. for full-time equivalent clients), the ability to pay has not necessarily been the main consideration. Rather, the board has merely chosen one source of revenue over another. Should the decision to accept one patient over another be based solely on the unaccepted patient's inability to pay, K.S.A. 19-4005 has been violated.

Unfortunately, K.S.A. 19-4001 et seq. does not set forth any penalties for violation of K.S.A. 19-4005. However, persons aggrieved by an alleged refusal of services because of inability to pay may seek recourse through private civil remedies. K.S.A. 19-4004 also allows a protest petition by electors wishing to limit the tax levy.

In summary, K.S.A. 19-4001 et seq. allows counties to establish community facilities for the mentally retarded, to levy a tax to support such facilities, and to solicit and accept funding from various other sources. K.S.A. 1987 Supp. 65-4411 et seq. establishes one source for such funding, based on the number of "full-time equivalent clients" in the facility. The definition of a full-time equivalent client is contained in K.S.A. 1987 Supp. 65-4413(b). Unless former state patients fit within the family-crisis exception, they cannot be accepted before those previously on the community facility's waiting list and still be defined as a full-time equivalent client.

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protest petition under K.S.A. 19-4004 seeking to block additional tax levies.

Very truly yours,

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